

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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GABINO GENAO,

Plaintiff,

21-CV-00303 (VF)

-against-

ORDER

CITY OF NEW YORK et al.,

Defendants.

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VALERIE FIGUEREDO, United States Magistrate Judge:

On June 21, 2024, Defendants submitted a letter seeking permission to file a second summary judgment motion. See ECF No. 131. Plaintiff opposed the request arguing that there was no good cause under Federal Rule of Civil Procedure 16 for amendment of the Court's scheduling order. See ECF No. 132. The Second Circuit has recognized that certain exceptions to the exhaustion requirement in the Prison Litigation Reform Act exist, including that a defendant waived the defense of failure to exhaust or acted in such a way as to be estopped from raising the defense. See, e.g., Ruggiero v. County of Orange, 467 F.3d 170, 175 (2d Cir. 2006). Defendants are hereby directed to submit a letter addressing waiver and estoppel and whether Defendants failure to raise their exhaustion argument earlier in this litigation (including during their first summary judgment) precludes their ability to raise it now. Defendants are directed to file their letter by no later than **Friday, July 19, 2024**.

SO ORDERED.

DATED: New York, New York
July 8, 2024



VALERIE FIGUEREDO
United States Magistrate Judge